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No. 73-1024

In the

Supreme Court of the United States

OCTOBER TERM, 1973

CALIFORNIA NEWSPAPERS, INC., d/b/a
SAN RAFAEL INDEPENDENT JOURNAL,
Petitioner,

vs.

SAN FRANCISCO TYPOGRAPHICAL UNION No. 21,
INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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CALIFORNIA NEWSPAPERS, INC. d/b/a SAN RAFAEL INDEPENDENT JOURNAL, as the Charging Party, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in these cases.[1]

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1. This petition covers two cases which were consolidated for purposes of argument and decision in the Court of Appeals—both being entitled *National Labor Relations Board v. San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO* and numbered 71-2949 and 71-2987, respectively. The former involved the employers mechanical superintendent and foreman of the composing room (Gordon Dixon). The latter involved the assistant foremen and the chief machinist in the composing room (Robert Dixon, Earl Dixon and Ernest Fingerlos).

OPINIONS BELOW

The order of the Court of Appeals (App. A, pp. 1-2 denying a rehearing and denying the suggestion for rehearing *en banc* is not yet officially reported. The opinion of the Court of Appeals (App. B, pp. 3-6) is not yet officially reported. The decisions and orders of the National Labor Relations Board (App. C, pp. 7-32 and App. D, pp. 33-71) are reported at 192 NLRB No. 71 and 193 NLRB No. 4, respectively.

JURISDICTION

The judgment of the Court of Appeals was entered on May 18, 1973, and the order denying a rehearing and rejecting a suggestion for rehearing *en banc* was entered on November 14, 1973. This petition is timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a labor organization, as found by the National Labor Relations Board (hereafter "Board"), violates Section 8(b)(1)(B) of the National Labor Relations Act by disciplining members who are supervisors for crossing a picket line to report for work during an economic strike against the employer.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

"Section 2. When used in this Act—

• • •

"(3) The term 'employee' shall include any employee, . . . but shall not include . . . any individual employed as a supervisor . . .

• • •

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 8.(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

• • •

"Section 14.(a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

STATEMENT OF THE CASE

A. The Board's Decisions

1. GORDON DIXON

Gordon Dixon was the mechanical superintendent and foreman of the composing room of the employer which publishes a daily newspaper. He was also a member of San Francisco Typographical Union No. 21. The Union and the Employer had a bargaining relationship which

required the foreman to be a member of the Union (App. C, p. 13). It is undisputed that he is a supervisor within the meaning of Section 2(11) of the Act, and that he adjusts employee grievances on behalf of the employer (App. C, pp. 13-14).

On January 17, 1970, the Union went on an economic strike because of an impasse in negotiations for a new collective bargaining agreement (*id* at 13). Gordon Dixon continued to report for work. On January 29, 1970, the Union filed internal charges against him for crossing the picket line to go to work and thereafter conducted a hearing thereon *id* at 16.[2]

Upon unfair labor practice charges filed by Petitioner herein, the Board in a unanimous decision held that the Union violated Section 8(b)(1)(B) of the Act by initiating charges and conducting proceedings against him for his continuing to work during the strike (App. C, pp. 8, 25).

The Board ordered the Union, *inter alia*, to rescind any fines levied against him and to rescind all suspensions, expulsions, or other disciplinary acts against him and to excise and expunge all records or other evidence in the Union's files resulting from the said charges and proceedings.

2. ROBERT AND EARL DIXON AND FINGERLOS

On January 30, 1970, the Union filed internal charges against Robert and Earl Dixon, who were both assistant foremen and members of the Union. These charges were for crossing the picket line to go to work (App. D, p. 50).

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2. At the time of the hearing before the Trial Examiner of the Board, the Union had not acted finally upon the charges against him. Subsequent to the hearing before the Trial Examiner, the Union fined him $10,000 and expelled him (App. C, p. 16, n. 8).

On April 22, 1970, the Union filed internal charges against Fingerlos who was the chief machinist and a member of the Union, for crossing the picket line to go to work (App. D, p. 51). The Union then conducted disciplinary hearings against them and fined them each $10,000 and expelled them from membership (App. D, pp. 50-51).[3]

Upon unfair labor practice charges filed by Petitioner herein, the Board in a unanimous decision held that the Union violated Section 8(b)(1)(B) of the Act by so disciplining these supervisor members (App. D, pp. 33-35).

The Board ordered the Union, *inter alia*, to rescind the fines levied against them and to rescind all suspensions, expulsions, or other disciplinary acts against them and to excise and expunge all records or other evidence in the Union's files resulting from the said charges and proceedings (App. D, pp. 34-35, 67).

B. The Decision of the Court of Appeals

The Court of Appeals concluded that since non-supervisors can be disciplined for crossing a picket line to report for work, there is no reason to treat supervisors who are members of the Union any differently. That Court was of the opinion that management's right to select its representatives under Section 8(b)(1)(B) is not affected by the Union's disciplinary action against management's representatives.

The Court below held that the Board's "broad interpretation of Section 8(b)(1)(B)" threatens "the ultimate weapon in labor's arsenal for achieving agreement on its

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3. Before the Trial Examiner the Union contested the supervisory status of Robert and Earl Dixon and Fingerlos (App. D, pp. 38-39). Before the Court of Appeals, the Union accepted the Board's finding that they were supervisors within the meaning of the Act and stated it did not dispute that they were such (Union's Brief, p. 4).

own terms." Concluding that the Board's interpretation was "an unjustifiable extension of the limited language of Section 8(b)(1)(B)," it denied enforcement of the Board's order in both cases (App. B, pp. 5-6).[4]

REASONS FOR GRANTING THE WRIT

1. The holding of the Court below, that Section 8(b)(1)(B) of the Act does not protect supervisor-members of a union from disciplinary action by the union for crossing a picket line to go to work during an economic strike, conflicts with the decisions of other Courts of Appeals.[5]

In *National Labor Relations Board v. Local 2150, International Brotherhood of Electrical Workers,* No. 71-1864, decided July 13, 1973, 83 LRRM 2827, the Court of Appeals for the Seventh Circuit sustained the Board's decision in *Local 2150 IBEW (Wisconsin Electric Power Co.),* 192 NLRB 77 wherein the Board held that the union violated Section 8(b)(1)(B) when it disciplined supervisors for crossing the picket line and performing struck work.

In *National Labor Relations Board v. Toledo Locals Nos. 15-P and 272 of the Lithographers and Photo-Engravers International Union (Toledo Blade Co.),* 437 F.2d 55, the Court of Appeals for the Sixth Circuit upheld the Board's conclusion that the union violated Section 8(b)(1)(B) by fining supervisor-members for continuing to work during a strike, in a work crew smaller than that required by the collective bargaining agreement. "This conduct of the union", the Court said, "could very well be considered as an endeavor to apply pressure on the supervisory em-

4. Petitions involving the same issue are now pending before this Court in 73-549, 73-556, 73-795 and 73-877.

5. In the instant case, differently than in the cases referred to in n. 4, *supra,* Gordon Dixon did not perform rank and file work behind the picket line. He performed his normal duties. Robert and Earl Dixon and Fingerlos performed some journeymens' tasks, but mainly performed their supervisory duties (App. A, p. 56).

ployees of the [company] . . . and to interfere with the performance of the duties which the employer required them to perform during the strike, and to influence them to take action which it, the employer, might deem detrimental to its best interests." 437 F.2d at 57.

In *International Brotherhood of Electrical Workers, Locals 641, et al. v. National Labor Relations Board, et al.*, No. 71-1712, decided June 29, 1973, 83 LRRM 2582, the Court of Appeals for the District of Columbia Circuit sitting *en banc* on rehearing, divided five to four in holding that the Board erred in finding a violation under Section 8(b)(1)(B) where the unions had fined supervisors who had crossed picket lines to perform rank and file work during an economic strike.

As that case demonstrates, there is not only a conflict in Circuits in the interpretation and application of Section 8(b)(1)(B), but also a close cleavage within the same Circuit. Also, as the Board in its petition to this Court in 73-795, points out, the question of whether Section 8(b)(1)(B) protects employers from union discipline of supervisor-members who engage in the universally recognized practice of assisting their employer during an economic strike is a recurrent one in the administration of the Act. The Board, in its petition in 73-795, sets forth approximately ten cases pending either enforcement in Courts of Appeals or decided by the Board in which the issue here raised is involved.[6]

Accordingly, in the light of the conflict and the importance of the issue, review by this Court is most appropriate.

2. The decisions of the Board in the instant case which the Court of Appeals overturned, were correct. The Court below erroneously interpreted and applied the Act.

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6. Petition of Board in 73-795, pp. 10-11.

Section 8(b)(1)(B) makes it unlawful for a labor organization to:

> "restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances . . ."

The Board, with the approval of the Courts, has, *inter alia*, applied the foregoing provision to situations where a union seeks to dictate the manner in which the selected representative of management performs his collective bargaining and grievance adjustment duties. *San Francisco-Oakland Mailers' Union No. 18*, 172 NLRB 2173; *Dallas Mailers Union, Local 143*, 181 NLRB 286, enf'd. 445 F.2d 730 (Cir. D.C., 1970); *New Mexico District Council of Carpenters and Joiners of America (A. S. Horner, Inc.)*, 176 NLRB 797 and 177 NLRB 500, enf'd. *sub nom, NLRB v. New Mexico District Council of Carpenters and Joiners*, 454 F.2d 1116 (Cir. 10, 1972); *Toledo Locals Nos. 15-P and 272, Lithographers & Photoengravers International Union, AFL-CIO (Toledo Blade)*, 175 NLRB 1072, enf'd. 437 F.2d 55 (Cir. 6, 1971); *Sheet Metal Workers International Association, Local Union 49, AFL-CIO*, 178 NLRB No. 24, enf'd. 430 F.2d 1348 (Cir. 10, 1970); *Houston Typographical Union No. 87*, 182 NLRB 592; *Meat Cutters Local 81, Amalgamated Meat Cutters & Butcher Workmen of America*, AFL-CIO, 185 NLRB 884, enf'd. 458 F.2d 794 (Cir. D.C., 1972).

The Court of Appeals for the District of Columbia in *International Brotherhood of Electrical Workers, AFL-CIO, et al. v. National Labor Relations Board, (Illinois Bell)* and *International Brotherhood of Electrical Workers, Local 641, et al. v. National Labor Relations Board, et al., (Florida Power and Light)*, both *supra*, acknowledged that Section 8(b)(1)(B) could be extended beyond its literal

reach and that the provision would protect a supervisor against union discipline when he "crosses a picket line to perform *supervisory* work." 83 LRRM at 2591.

As mentioned previously, n. 5, *supra*, in the instant case, one supervisor did not perform rank and file work, but crossed to perform his regular work. The other three performed some rank and file work in addition to their regular supervisory duties. They were not charged by the union with performing rank and file work. Gordon Dixon was charged by the union with failing to cease work in observance of the union's strike and continuing to work thereafter (App. C, p. 16). The other two Dixons were charged with "working behind" the picket line and Fingerlos was charged with having "crossed the picket line" and "had returned to work" (App. D, pp. 50, 51).

Thus, the holding of the Ninth Circuit in the instant case is in conflict even with the view of the majority in the District of Columbia Circuit, *(Illinois Bell and Florida Power and Light), supra.*

This Court has long held that in a strike management has a right to keep operating, even to the extent of hiring permanent replacements for those who are economic strikers. *National Labor Relations Bd. v. Mackay R. & Tel. Co.*, 304 U.S. 333, 345. This being so, surely it must follow that management has a right to utilize its supervisors during a strike without impingement on that right by union disciplinary action against such supervisors.

As stated by the Seventh Circuit in *National Labor Relations Board v. Local 2150 (Wisconsin Electric Power Co.), supra:*

> "[I]t can hardly be doubted that it is an essential part of the economic warfare involved in a strike for management to muster its resources in an effort to withstand the union's economic coercion. Equally undisputable, it would seem, is that an employer is not limited to combatting a strike only with his pocketbook

> while the business lies idle. Rather, management has 'traditionally' . . . relied upon supervisors, where practicable, to pitch in and perform rank-and-file work in an attempt both to strengthen its bargaining position and to preserve the enterprise from collapse during an adverse economic repercussion following a strike. Insofar as the supervisors work to give the employer added economic leverage, they are acting as members of the management team are expected to act when the employer and union are at loggererheads in their most fundamental of disputes. Indeed, in a real sense they are representing the employer for the purpose of collective bargaining, for 'the use of economic pressure by the parties to a labor dispute . . . is part and parcel of the process of collective bargaining.' " . . .

A fortiori, in the instant case, where the supervisors who were disciplined did supervisory work.

As pointed out in the Board's petition to this Court in 73-795, the Board's conclusion that Section 8(b)(1)(B) proscribes union discipline of supervisors who are union members for supporting their employer during an economic strike harmonizes that section with other provisions of the Act.[7]

As this Court has often stated, the Court's should defer to the expertise of the Board, albeit not supinely, in the interpretation and application of the Act which it administers. ". . . upon such questions of law, the experienced judgment of the Board is entitled to great weight." *Medeo Photo S. Corp. v. National Labor R. Board,* 321 U.S. 678 at 681, n. 1. In *Standard Generator S. Co. v. National Labor Rel. Bd.,* 186 F.2d 606 (Cir. 8, 1951), it was held that on questions of law the judgment of the Board is entitled to

7. To avoid unnecessary repetition, for this argument of the Board, see Board's petition in 73-795, pp. 13-14.

respect. "It is for the Board and not for the courts to say what is necessary in a given case to effectuate the policies of the Act." 186 F.2d at 607. Clearly, the Courts should defer to the Board in its effort to balance the right of unions to engage in lawful economic action and the right of employers to continue to operate their businesses while under the seige of such economic action.

The Court below, like the majority in the District of Columbia Circuit, misplaced its reliance on *National Labor Relations Board v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175. That case does not support the position of the Ninth Circuit in the instant case. *Allis-Chalmers* dealt only with the issue of whether union fines against *non-supervisory employee*-members for strike breaking, violated Section 8(b)(1)(B) as a restraint or coercion of such *non-supervisory employees* in the exercise of their right under Section 7 of the Act to refrain from concerted activity. Here, the issue is whether the imposition of disciplinary action against *supervisor*-members for crossing the picket line to work is an unfair labor practice under Section 8(b)(1)(B) as a restraint or coercion of the *employer* in his right to select and retain loyal representatives. "Since Sections 8(b)(1)(A) and 8(b)(1)(B) protect different interests, it simply does not follow that discipline which does not amount to restraint or coercion of the employee under the former cannot constitute restraint or coercion of the employer under the latter." *National Labor Relations Board v. Local 2150 (Wisconsin Electric Power Co.), supra*, 83 LRRM at 2832.

As the Sixth Circuit observed in upholding the Board's position that union discipline of supervisors for continuing to work during a strike violates 8(b)(1)(B), such conduct may "very well be considered as an endeavor to apply pres-

sure on the supervisory employees . . . and to influence them to take action which it, the employer, might deem detrimental to its best interests"; and it would "further operate to make the [supervisory] employees reluctant in the future to take a position adverse to the union, and their usefulness to their employer would thereby be impaired." *National Labor Relations Board v. Toledo Locals No. 15 and 272 of the Lithographers and Photo-Engravers International Union (Toledo Blade Co.)*, 437 F.2d at 57. Such conduct said the Court "constitute[s] an interference with the employer's right to control its own representatives." 437 F.2d at 57.

Thus, if a union rule "invades or frustrates an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating Section 8(b)(1)(B)." *Scofield v. N.L.R.B.*, 394 U.S. 423, 429.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: December 28, 1973.

(Appendices Follow)

Appendix A

United States Court of Appeals for the Ninth Circuit

Nos. 71-2949, 71-2987

National Labor Relations Board,

Petitioner,

vs.

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO,

Respondent.

...ed—Nov. 14, 1973
...k, U.S. Court of Appeals

On Petition for Rehearing

...ore: Merrill and Ely, Circuit Judges, and Solomon, District Judge.*

...omon, Judge:

In its petition for rehearing the Board has asked us to ...nsider our decision that Section 8(b)(1)(B) does not ...vent unions from fining supervisors who perform rank-...-file work behind a picket line.

The Board has asked us to consider *NLRB v. Local 2150,* ...ternational Brotherhood of Electrical Workers, ...d ..... (7th Cir., July 13, 1973), decided shortly after ... issued our opinion. In that case strikebreaking super-...ors held withdrawal cards which entitled them to pension ...efits and waiver of reinstatement requirements. They

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*Honorable Gus J. Solomon, United States District Judge, Port-..., Oregon, sitting by designation.

were fined by the union for crossing picket lines and performing rank-and-file struck work. The Seventh Circuit found that the imposition of such fines was an unfair labor practice because the supervisors were exercising a proper managerial function and were therefore protected under the Act.

Our attention has also been called to *International Brotherhood of Electrical Workers v. NLRB*, ... F.2d ..... (D.C. Cir., June 29, 1973) (on rehearing in banc). In that case, also decided after our opinion was announced, the D. C. Circuit, in banc, on a rehearing, came to the opposite conclusion. That Court found, as we did, that although strikebreaking may be in the employer's economic interest, supervisors who perform rank-and-file struck work are not representing the employer "for the purposes of collective bargaining or the adjustment of grievances" under Section 8(b)(1)(B). We agree.

NLRB v. Boeing Co., 412 U.S. 67 (1973), was decided after our opinion was filed. We held that the Board was required to pass on the reasonableness of the $10,000 fines imposed by the union on two of its supervisory members. We remanded the case to the Board for further proceedings on these fines. In *Boeing* the Supreme Court held that the reasonableness of union fines must be decided in a separate proceeding by the state courts and not by the Board. We therefore delete that portion of our opinion remanding the case to the Board to consider the reasonableness of the $10,000 fines.

In all other respects we adhere to our former opinion.

The full court was informed of the suggestion for an in banc hearing, and no judge requested a vote on the suggestion for a rehearing in banc. Fed.R.App.P. 35(b).

The petition for rehearing is denied, and the suggestion for a rehearing in banc is rejected.

Appendix B

United States Court of Appeals for the Ninth Circuit

Nos. 71-2949 and 71-2987

National Labor Relations Board,

Petitioner,

vs.

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO,

Respondent.

Filed—May 18, 1973
Dennis R. Mathews, Clerk

On Application for Enforcement of an Order of the National Labor Relations Board

Before: Merrill and Ely, Circuit Judges, and Solomon, District Judge.*

Solomon, District Judge:

The National Labor Relations Board (the Board) seeks to enforce its orders directing the Typographical Union to rescind the disciplinary actions the Union took against four members who were supervisory employees of the San Rafael Independent Journal (Journal). The Board contends that the Union may not punish these men for violating Union rules and policy, even though they crossed and worked behind the Union's picket lines.

*Honorable Gus J. Solomon, United States District Judge, Portland, Oregon, sitting by designation.

Gordon Dixon was the mechanical superintendent and the foreman of the composing room. On October 10, 1969, Dixon, exercising his authority as foreman, discharged Paul Austin because Austin took an afternoon off without permission. The Union voted to require Dixon to reinstate Austin, but Dixon refused. The President of the Union filed charges against Dixon, and, after a hearing, Dixon was fined $418.00.

The Board determined that the Union's action was an unfair labor practice, and it ordered the Union to rescind the fine and expunge Dixon's record.

Later, the Union disciplined Robert Dixon, Earl Dixon and Ernest Fingerlos because they crossed the Union's picket line. On January 7, 1970, the Union struck the Journal after a breakdown in contract negotiations. Robert and Earl Dixon, both assistant foremen in the composing room, ignored the picket line and continued to work. The Union expelled and fined them each $10,000.00 for strikebreaking.

Ernest Fingerlos was the chief machinist. Fingerlos first joined the strike but returned to his job about three months later while the strike was still in progress. The Union expelled Fingerlos and fined him $10,000.00.

Gordon Dixon also crossed the picket line and was charged with strikebreaking. The Union had tried him, but at the time of the Board's hearing, the results were not known to the trial examiner.

The Board found that the Union illegally punished the strikebreakers and ordered the Union to rescind the fines, reinstate the men, and expunge their records.

Section 8 of the National Labor Relations Act, 29 U.S.C. § 158, defines unfair labor practices. It provides, in part, that:

> (b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

. . . .

The Board acknowledges that Section 8(b)(1)(A) does not prevent a union from imposing reasonable fines on members who cross a picket line, or from expelling them. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967). But the Board contends that here the Union violated Section 8(b)(1)(B) because the members were supervisors.

The Union contends that it can discipline a supervisor for the same reasons it can discipline any other member.

The Union fined Gordon Dixon because he discharged an employee. Dixon acted in his capacity as a foreman empowered by the Journal to punish employees who violate company rules. By fining Dixon, the Union interfered with Dixon's position as a supervisor and committed an unfair labor practice under Section 8(b)(1)(B). *NLRB v. Toledo Locals Nos. 15-P and 272 of the Lithographers and Photo-Engravers Int'l. Union*, 437 F.2d 55 (6th Cir. 1971).

The Union's punishment of the strikebreakers presents a different issue. Although Robert and Earl Dixon and Ernest Fingerlos were supervisors, the Union did not punish them for exercising any management duty.

These three men refused to honor the picket line of their Union, and there is no reason to treat them differently than

non-supervisors. The Journal's right to select management representatives under Section 8(b)(1)(B) is not affected by the Union's action.

In *Allis-Chalmers,* the Supreme Court said that "[t]he economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement on its own terms, and '[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent . . . .'" *Id.* at 181. Here, the Board's broad interpretation of Section 8(b)(1)(B) threatens that power. It is an unjustifiable extension of the limited language of Section 8(b)(1)(B). Had the members elected to resign from the Union, the power of the Union over them would have ended. *NLRB v. Granite State Joint Board, etc.,* 41 U.S.L.W. 4074 (U.S. Dec. 7, 1972). But here the members remained in the Union, and therefore continued to be subject to their obligations as members.

The Board has not passed on whether the $10,000 fines are unreasonable, and therefore illegal, under *Allis-Chalmers.* We express no opinion on that issue. The Board must make that determination in the first instance. *Morton Salt Co. v. NLRB,* No. 71-1853 (9th Cir., Dec. 8, 1972), *petition for cert. filed,* March 6, 1973, No. 72-1210.

The issue of whether the expelled members lose their Union benefits is not properly before us, and we express no opinion on that issue.

We grant enforcement of the Board order rescinding the $418.00 fine against Gordon Dixon, and we remand to the Board for further proceedings relative to the $10,000.00 fines. Otherwise, enforcement is denied.

Appendix C

192 NLRB No. 71
D—4670
San Francisco, Calif.

United States of America
Before the National Labor Relations Board

Case 20—CB—2205

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO

and

California Newspapers, Inc. d/b/a San Rafael Independent Journal

DECISION AND ORDER

On August 3, 1970, Trial Examiner Allen Sinsheimer, Jr., issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof. The General Counsel filed limited exceptions to the Trial Examiner's Decision and a brief in support of that Decision. The Charging Party also filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations[1] of the Trial Examiner[2] as modified below.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner as modified below and hereby orders that the Respondent, San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified.

1. Delete paragraph 1(b) of the Trial Examiner's Recommended Order and substitute the following paragraph in lieu thereof:

> Initiating charges or proceedings against, or fining or otherwise disciplining, Foreman Gordon Dixon because of his conduct and performance of work as the selected representative of California Newspapers, Inc. d/b/a San Rafael Independent Journal, for the purposes of collective bargaining or the adjustment of grievances.

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1. The General Counsel requests that the charges and proceedings initiated by Respondent against Dixon, as well as the resulting fine, be considered part of the 8(b)(1)(B) conduct herein. We agree that it should be and shall modify the Trial Examiner's Recommended Order and Appendix to reflect this finding.

2. *Local Union No. 2150, International Brotherhood of Electrical Workers, AFL-CIO (Wisconsin Electric Power Company)*, 192 NLRB No. 16.

APPENDIX A

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT in any manner restrain or coerce California Newspapers, Inc. d/b/a San Rafael Independent Journal in the selection of representatives chosen by it for the purposes of collective bargaining or the adjustment of grievances.

WE WILL NOT institute charges or proceedings against Gordon Dixon, or fine or otherwise discipline him, because of his conduct and performance of work as the selected representative of California Newspapers, Inc. d/b/a San Rafael Independent Journal, for the purposes of collective bargaining or the adjustment of grievances.

WE WILL rescind all fines and costs and all other disciplinary action and excise and expunge all records or other evidence in our files connected with or related to the charges and proceedings against Gordon Dixon arising out of or connected with the discharge of Paul Austin.

WE WILL rescind any disciplinary action taken against Gordon Dixon and excise and expunge all records or other evidence in our files resulting from charges and proceedings brought against Gordon Dixon because of his working for the Charging Party during the course of the strike called by us.

SAN FRANCISCO TYPOGRAPHICAL UNION NO. 21, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title

This is an official notice and must not be defaced by any one.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1305 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102. Telephone 415-556-3197.

2. In fn. 18 of the Trial Examiner's Decision, substitute "20" for "10" days.

3. Substitute the attached Appendix A for the Trial Examiner's Appendix A.

Dated, Washington, D.C. Aug. 4 1971

.....
Edward B. Miller, Chairman

.....
Howard Jenkins, Jr., Member

.....
Ralph E. Kennedy, Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

TXD-(SF)-134-70
San Francisco, Calif.

United States of America
Before the National Labor Relations Board
Division of Trial Examiners
Branch Office
San Francisco, California

Case No. 20—CB—2205

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO

and

California Newspapers, Inc. d/b/a San Rafael Independent Journal

W. David Smullin, Esq., of San Francisco, Calif., for the General Counsel.

Severson, Werson, Berke & Melchior, by *Nathan R. Berke, Esq.*, of San Francisco, Calif., for the Charging Party.

Brundage, Neyhart, Grodin & Beeson, by *Duane B. Beeson, Esq.*, of San Francisco, Calif., on behalf of the Respondent.

TRIAL EXAMINER'S DECISION

Statement of the Case

ALLEN SINSHEIMER, JR., Trial Examiner: This proceeding was heard at San Francisco, California, on May

6, 7 and 13, 1970.[1] The complaint herein issued on April 10, 1970,[2] based on an original charge filed March 5, 1970, and an amended charge filed April 7, 1970, alleges violations of Section 8(b)(1)(B) of the Act by virtue of charges (before it) filed by Respondent Union against Foreman Gordon Dixon, a union member, which resulted in fines in one instance and which were still pending final action before the Union in the other. The issue in the first instance involves the question of whether the Respondent's action in filing charges and fining a foreman, who was a union member, for his action and conduct involving and arising out of the termination of an employee was a violation of Section 8(b)(1)(B). The issue, in the second instance arises from charges filed against the same foreman for continuing to work during the course of a strike called by Respondent.

Upon the entire record including my observation of the witnesses and after due consideration of the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following:[3]

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1. It had been consolidated with Case No. 20-CC-965 but was severed therefrom by order of the Trial Examiner at the hearing on May 7.

2. An answer to the complaint was filed April 16, 1970, an amendment to the complaint was issued April 24, 1970, an answer to the amendment to the complaint was dated May 6, 1970, a further amendment to the complaint was filed at the hearing May 6, 1970, and another amendment to the complaint at the hearing on May 13, 1970, and an amendment to the answer was filed on May 13, 1970, also at the hearing.

3. The General Counsel has filed a motion to correct the record herein. No opposition thereto has been received. I have carefully checked the requested corrections and find that they are in order. The motion to correct the record is hereby granted and the corrections incorporated herein as Appendix B.

Findings and Conclusions

I. The Business of the Charging Party

California Newspapers, Inc., a corporation d/b/a San Rafael Independent Journal, herein called the Charging Party, is engaged in commerce within the meaning of the Act and the Board's jurisdictional standards, and I so find.

II. The Labor Organization Involved

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, herein called the Respondent, is a labor organization within the meaning of the Act, and I so find.

III. The Alleged Unfair Labor Practices

A. *Background*

The Charging Party and Respondent Union had been parties to collective-bargaining agreements for many years with the latest agreement bearing expiration date of November 2, 1968. Thereafter, a bargaining relationship continued to at least January 7, 1970, when a strike occurred. There is disagreement as to whether the terms of the latest contract were continued in effect between November 2, 1968, and January 7, 1970, which I do not consider necessary to resolve herein. By the terms of the agreement ending November 2, 1968, and of prior agreements, the composing room foreman was required to be a union member. Gordon Dixon, at all times involved herein, was the mechanical superintendent and composing room foreman for The Journal. Dixon has been a member of the Union for over 40 years and continued to maintain his membership during the time herein involved except as such may have been affected by the events which will be set forth. It was ad-

mitted, stipulated and I find that Dixon was the composing room foreman and a supervisor within the meaning of the Act and a representative of the employer in the handling and adjustment of grievances up to and including January 7, 1970. The record further establishes, and I find that Dixon continued to be, up to and including the time of the hearing, composing room foreman, a supervisor within the meaning of the Act and a representative of the employer in the handling and adjustment of grievances who would have dealt with any grievances which might have arisen after January 7, 1970, as well as before.

B. *Statement of Pertinent Facts*

On October 10, 1969, one of the employees of the composing room, a member of Respondent, Paul Austin, was absent after lunch. Dixon inquired as to where he was. Austin's immediate supervisor, Kent Dreitzler, said he didn't know but the chapel chairman might know. Dixon learned from the chapel chairman[4] that Austin had taken the afternoon off. Dixon then inquired of Dreitzler whether Austin had said anything about leaving and Dreitzler said Austin had not. Dixon then informed the chapel chairman that he was going to discharge Austin and did so.

The following Monday, October 13, the employees in the composing room comprising Respondent's chapel at The Journal met concerning a verbal grievance based on Austin's discharge. Austin spoke and Dixon indicated he would have allowed Austin the time off if he had asked for it. Following discussion, the chapel voted to reinstate Austin.

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4. The chapel is the group of printers in the employ of The Journal and the chapel chairman is its representative in a position comparable in certain respects to a shop steward. A chapel is a part of the structure of the Respondent Union and its duties and functions are specified in the Union's constitution, laws, etc.

Thereafter, the assistant chapel chairman asked Dixon if he would appeal the chapel's decision. Dixon said he would not and that he wasn't going to rehire Austin either. On October 17, the president of Respondent filed charges against Dixon for failing to rehire Austin or to appeal the chapel's decision.[5] On November 16, at its membership meeting, Respondent voted to deem the charges cognizable.[6] An investigating committee was then appointed and a meeting thereof set for December 1. Dixon was requested to appear. Upon receipt of the letter, he telegraphed Respondent's president protesting the notice and requesting a continuance. He was informed it was too late to cancel the meeting.[7] On December 21, the investigating committee recommended that the membership consider the charges worthy of trial. By letter of December 13, Dixon was informed of this recommendation, that it had been adopted and that a trial committee had been appointed. He was also requested to appear before it on January 14, 1970. By telegram of January 13, The Journal's general manager informed Respondent's president that he had instructed Dixon not to appear. On January 18, 1970, the trial committee issued its report recommending four fines of $100 each plus costs. On the same day, Respondent's members voted to adopt the recommendations and impose the fines. On January 23, 1970, Dixon was notified by letter of the membership's action and the total amount he was fined, $418.

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5. The formal charges were four in number and specified violations of specific provisions of ITU Constitution, ITU By-Laws, ITU General Laws and Local Laws, respectively.

6. Which means a finding of sufficient evidence to warrant sending the matter to an investigating committee.

7. It does not appear that any issue has been raised herein as to the propriety of the proceedings as such.

On January 29, 1970, Respondent's president preferred charges against Dixon for failing to cease work in observance of Respondent's strike and continuing to work thereafter. President Olson mailed a copy to Dixon advising him that the charges would be presented at a membership meeting on February 15. On March 23, Olson advised Dixon that the membership had voted at a recessed meeting on March 15 to deem cognizable the charges preferred on January 29 and that an investigating committee had been appointed. Dixon was requested to appear before such committee. By letter of May 1, Dixon was informed that the investigating committee had recommended that the charges were worthy of trial and the membership had adopted this on April 19. Dixon was further informed that a trial committee had been appointed and was requested to appear before it on May 11. The trial committee met May 11 and 2 days later at the hearing Respondent's president said he didn't know exactly what action had been taken but he understood from one of the members that it was recommending that Dixon be expelled. The foregoing represents the status of these charges at the close of the hearing herein and accordingly all that I can or will consider in arriving at a decision herein.[8]

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8. In a brief filed by the Charging Party, it is asserted that Dixon was fined by the Union the sum of $10,000 for his action in working during the strike. This is not a part of the formal record and was not presented in the form of either a stipulation or motion. The fact of a fine, if true, in my opinion, would not materially affect resolution of any issue herein. Nor would the amount of fine for there is no allegation or issue with respect thereto.

C. *Findings and Conclusions*

Section 8(b)(1)(B) which is here involved provides that:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> to restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances.

1. Respondent's action against Dixon arising from the Austin Discharge

The General Counsel contends that Respondent's actions against Dixon because of the discharge of Austin and his alleged failure to appeal the decision of the chapel violated the above section under the decisions of the Board interpreting it. The Respondent contends that the Board has misread Section 8(b)(1)(B) "to preclude any kind of union discipline of a foreman member irrespective of whether the discipline is related to the foreman's authority to represent the employer in matters of collective bargaining and the adjustment of grievances." Apparently this contention relates to the Union's charge of refusal or failure by Dixon to comply with procedures required by the general laws of the Union and adopted by reference in the recently expired contract.

However, the Board cases as Respondent counsel concedes, make no distinction between discipline for noncompliance with union rules and discipline related to the foreman's authority to adjust grievances *where a grievance or potential grievance may be involved.* In this case as the record reflects, the application of union procedures and laws to a matter or situation involving a grievance necessarily would affect the authority of Dixon, the employer's representative with respect thereto. Respondent counsel

makes an additional contention that the case is distinguished in one significant respect from those where the Board has expressed its views, in that the foreman's (Dixon's) membership at the time of the events in the case was "entirely voluntarily and cannot be found to have been required by a collective bargaining agreement." Without determining whether or not an agreement was still in effect, I note two items: First, that Dixon had attained an age where *as a member in good standing* he was eligible for a $100 a month pension from the Respondent and was also entitled to a $500 mortuary benefit. This latter would certainly impel a continuation of union membership on Dixon's part without reference to a contract. Moreover, under the Board decisions it does not appear to be necessary that membership be required under a contract or there be compulsion to maintain membership, but it has been found sufficient that the foreman be a member subject to union control, or discipline and that such discipline is either imposed or sought to be imposed by way of expulsion, fine or otherwise. The Board has accordingly found violations in cases such as *Horner, New Mexico District Council of Carpenters and Joiners of America (A.S. Horner, Inc.)*, 177 NLRB No. 76, and *New Mexico District Council of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America (A. S. Horner, Inc.)*, 176 NLRB No. 105. In neither case was the supervisor who was disciplined required to be a union member.

The Board has also specifically held in *Toledo Locals Nos. 15-P and 272 of the Lithographers and Photoengravers International Union AFL-CIO (The Toledo Blade Company, Inc.)*, 175 NLRB No. 173, which is quoted in *Dallas Mailers Union Local No. 143* and *International Mailers Union (Dow Jones Company, Inc.)*, 181 NLRB No. 49, that

it is apparent from the language of Section 8(b)(1)(B) and the reasoning of the Board "that it is not an essential element of the unfair labor practices that the disciplined supervisor be a compelled union member under a union security clause obtained by the Union. It is enough that his actual membership has colorably subjected him to the offensive discipline in its effect on his employer's right to rely upon him as a supervisor."[9]

The foregoing is contra to Respondent's contention that there must be a requirement or compulsion of union membership predicated on a contract between the parties. I accordingly conclude and find that by imposing the fines on Dixon because of his action involving the discharge of Austin,[10] Respondent restrained and coerced the Charging Party in its selection of a representative for the purposes of collective bargaining or the adjustment of grievances and thereby violated Section 8(b)(1)(B) of the Act.[11]

2. Respondent's action against Dixon for working during the strike

With respect to the alleged violation by Respondent of Section 8(b)(1)(B) by the charges, proceedings and any action stemming therefrom against Dixon for working during the course of the strike, called "ratting", it appears

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9. *Dow Jones, Inc., supra*, page 9, TXD.

10. The Board has also held that the fact the pressure on the employer may be indirect rather than direct does not alter the ultimate fact that pressure was exerted for the purpose of interfering with the employer's control over its representative. See *San Francisco Mailers Union No. 18, ITU*, 172 NLRB No. 252.

11. It should be noted that the Board has held that even though an actual grievance is not involved, the fact that a representative has the authority and is coerced in a like way by a union is a violation. See *Toledo Local No. 15-P and 272 of the Lithographers and Photoengravers International Union, supra.*

that Respondent proceeded through the steps of (1) finding the charges cognizable, (2) to appointment of an investigating committee, to (3) an investigation finding that the matter should be tried, to (4) a trial whose results were not disclosed as of the time of the hearing.

There are admittedly certain differences in the action taken against Dixon arising out of working during the strike from the action taken against him arising out of the Austin discharge. To begin with the impact on the employer's control of bargaining and grievances may appear less direct insofar as it does not stem from conduct directly involving a grievance. Any effect on subsequent grievances therefore comes about through the impact of a fine, expulsion, or other discipline imposed upon a foreman who crosses a picket line *for his working during the strike.* The Union accordingly contends that this is related to union membership and not to conduct as a representative of the employer and that said impact would necessarily be indirect and a result of union membership unconnected with any effort to restrain or coerce the employer in selecting his representative for handling and adjusting grievances. However, as set forth, *supra,* footnote 11, a determination of restraint and coercion of an employer in the selection of a representative for the handling or adjustment of grievances is not affected by the fact there are no current grievances.

Here again the Respondent also argues the absence of a contractual requirement of union membership as a missing element to a finding of restraint and coercion by it. First, as to the latter, I have noted before that there would be compulsion on Dixon from the Union's action both by way of threatened or potential fines and because of threat-

ened or potential loss of substantial benefits,[12] were he to suffer loss of good standing in the Union. Second, as the Board has found,[13] a contractual requirement of union membership is not a prerequisite to a finding of restraint or coercion under Section 8(b)(1)(B).

The Union also contends that the Board has not ruled on the precise question here and because the Supreme Court has held that Section 8(b)(1) does not apply to the imposition of a union fine[14] or to expulsion, that the policies which underlie the *Allis-Chalmers* decision are equally applicable to Section 8(b)(1)(B). Respondent argues that *Allis-Chalmers* decision in essence recognizes "the power in the chosen union to protect against erosion of its status . . . through reasonable discipline of members and particularly in strike situations is not less important with respect to supervisors who become strike breakers then with respect to employees who turn against the Union."

Respondent also argues cogently that the policy underlying 8(b)(1)(B) that employers be free from undue pressures in the selection of supervisors who handle grievances and bargaining is not unreasonably affected by allowing the Union to enforce its internal rules against strike breakers and Respondent states further that a strike particularly "in the present case is the ultimate test of strength of the Union as an entity and survival of representation rights may well hang in the balance." It argues that in enforcing its rules in such situations, the supervisor-member must choose to either go with it or against it and there is no middle ground. Respondent contends further that in either case there is no continuing pressure against the employer

12. Substantial pension rights and mortuary benefits.

13. See cases cited, *supra*.

14. See *N.L.R.B. v. Allis-Chalmers*, 388 U.S. 175.

under 8(b)(1)(B), because if the supervisor sides with the Union, the employer is free to replace him and if he crosses the picket line he demonstrates his freedom from union persuasion.

I note first in connection with the above that 8(b)(1)(B) does not have the proviso dealing with internal union rules and affairs that is applicable to 8(b)(1)(A) which was involved in the *Allis-Chalmers* case *supra*.[15] In *New Mexico District Council of Carpenters and Joiners of America* (*A. S. Horner, Inc., supra*), the Board said:

> The Respondent, relying on *N.L.R.B. v. Allis-Chalmers Manufacturing Co., et al.*, 388 U.S. 175, contends that its conduct in disciplining Freese for violations of its internal union rules and regulations was within its legitimate internal interests as a labor organization, as permitted by the proviso to Section 8(b)(1)(A) of the Act. We find no merit in this contention. The Supreme Court's rationale in *Allis-Chalmers* does not permit a labor organization to interfere with an employer's right, under Section 8(b)(1)(B), to select its representatives for the purposes of collective bargaining or the adjustment of grievances. Thus, in *San Francisco-Oakland Mailers'*, we distinguished the *Allis-Chalmers* case and held that the proviso to Section 8(b)(1)(A) is limited to that section only and is not a part of Section 8(b)(1)(B).

Second, whatever might be the effect on a union of inhibiting its action against rank-and-file members who may

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15. Section 8(b)(1)(A) including the proviso thereto is as follows:

> It shall be an unfair labor practice for a labor organization or its agents—
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> to restrain or coerce employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

work during a strike, discussed in *Allis-Chalmers,* the effect of only inhibiting such action against foremen is obviously quite different. The first affects all, the latter only a few by comparison. It is these, whom the provisions of 8(b)(1)(B) are specifically directed to. Protecting an employer with respect to his control over foremen would not thwart or greatly inhibit the union's control over members generally.

Further as to Respondent's contention concerning continuing pressure against the employer, the Charging Party and the Union here have had a bargaining relationship which has required the foreman to be a union member. A union strike would ordinarily have as a purpose the effecting of another contract. There is neither reason to assume nor evidence to conclude that the Union would not seek to have a union foreman in the plant were it to enter into another contract. If the latter is the case, it is difficult to see how the strike and other matters could be resolved if the employer were to retain a nonunion foreman. Would this not pressure Dixon and hence his employer?

In addition the provisions of 8(b)(1)(B) do not indicate that the foreman must make a choice as a member of the Union. Rather the statute is in terms directed to the Union and what it *cannot* do. The Board has held that expulsion of a supervisor would likely have an inhibiting "effect on his future conduct as a supervisor and representative of the Company *because of his desire for reinstatement in the Union,* and would accordingly restrain and coerce the Company from retaining him as its representative within the meaning of Section 8(b)(1)(B) of the Act."[16] [Emphasis supplied.] The same would also be true of other disciplinary action by fine or suspension from good standing.

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16. *Dallas Mailers Union Local 181, supra.*

Furthermore, the Trial Examiner is expected to follow the Board insofar that it has indicated a position and in this instance additionally, although the case is not identical, the Board has held in *New Mexico District Council of Carpenters and Joiners of America (A. S. Horner Inc.), supra,* that Respondent therein violated Section 8(b)(1)(B) by fining a supervisor of the Company "for failing to cease work when requested to do so by an authorized agent of the Respondent." [Emphasis supplied.] The employer in that case was not making contributions to the Respondent's health and welfare fund. The Respondent therein was boycotting the employer with whom it did not have a contract while making it a violation subject to fine for its members to work for such employer. The Board stated, "It is clear therefore that *compliance by* Freese with the Respondent's demands would have had the effect of depriving the Company of the services of its selected representative for the purposes of collective bargaining or the adjustment of grievances." [Emphasis supplied.]

A recent Trial Examiner's Decision, *Milwaukee Printing & Pressmen Assistants Union, No. 7,* TXD-187-70, April 2, 1970 of Trial Examiner George Downing is also pertinent. Therein he found that a union's fine of a working foreman in charge of the pressroom for crossing the union's picket line violated Section 8(b)(1)(B). Trial Examiner Downing stated:

> As the Board has noted, the firing or other disciplining of a management representative will have an inhibiting effect on his future conduct as a supervisor and representative of the employer and will accordingly restrain the employer from retaining him as its representative. Such disciplinary measures will also be a clear signal to other foremen, who under the established practice are members of the Union, that they

would be subject to similar discipline if they administer the contract or dispose of grievances in a manner displeasing to the union. Thus the effect of the disciplinary action is to restrain and coerce the employer within the meaning of Section 8(b)(1)(B) by limiting its "right at any time to make and rely upon a selection of representatives from an uncoerced group of such supervisors whose loyalty to [it] has not been prejudiced." *Dallas Mailers' Union etc. (Dow Jones Company, Inc.)*, 181 NLRB No. 49 quoting from *Toledo Blade Company, supra.*

The Horner case and the other cases cited reflect the Board's interpretation of the meaning and application of Section 8(b)(1)(B). I consider these applicable and binding herein and accordingly find that by bringing the charges and conducting the proceedings against Dixon which could lead to disciplinary action by the Union that the Respondent restrained and coerced the Charging Party in violation of Section 8(b)(1)(B).

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Charging Party, set forth in section III, above, occurring in connection with the operations of the Charging Party described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Charging Party has engaged in and is engaging in certain unfair labor practices, I shall

recommend that it cease and desist therefrom and that it take certain affirmative action which I find necessary to remedy and remove the effects of the unfair labor practices and to effectuate the policies of the Act.

Upon the basis of the foregoing findings and conclusions and upon the entire record in this case, I make the following:

Conclusions of Law

1. The Charging Party is engaged in and affects commerce within the meaning of the Act.

2. The Union is a labor organization within the meaning of the Act.

3. The Union has violated Section 8(b)(1)(B) of the Act by fining Foreman Gordon Dixon for his conduct in connection with the discharged employee Austin as set forth above.

4. The Union has violated Section 8(b)(1)(B) of the Act by initiating charges and conducting proceedings pursuant thereto against Foreman Gordon Dixon for his continuing to work during the course of a strike conducted by the Respondent against the Charging Party.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact, and conclusions of law, and the entire record in this case, it is recommended that Respondent, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) In any manner restraining or coercing California Newspapers, Inc. d/b/a San Rafael Independent Journal in the selection of representatives chosen by it for the purposes of collective bargaining or the adjustment of grievances.

(b) Fining or otherwise disciplining Foreman Gordon Dixon because of his conduct and performance of work as the selected representative of California Newspapers, Inc. d/b/a San Rafael Independent Journal for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Rescind all fines and costs and all other disciplinary action against Gordon Dixon, and excise and expunge all records or other evidence in the files of Respondent connected with or related to the charges and proceedings against Gordon Dixon arising out of or connected with the discharge of Paul Austin.

(b) Rescind any fines, suspensions, expulsions, or other disciplinary acts that may have been taken against Gordon Dixon, and excise and expunge all records or other evidence in the files of Respondent resulting from charges and proceedings brought against Gordon Dixon because of his working for the California Newspapers, Inc. d/b/a San Rafael Independent Journal during the course of the strike called by the Respondent.

(c) Advise the said Gordon Dixon, in writing, that Respondent has taken the aforesaid action in compliance with paragraph 2(a) and (b) above and that it will cease and desist from the actions forbidden in paragraphs 1(a) and (b) of this Order.

(d) Furnish the Regional Director for Region 20, in writing, signed copies of said notice for posting by California Newspapers, Inc. d/b/a San Rafael Independent Journal, if willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director shall, after being signed by the Respondent, be forthwith returned to the Regional Director for disposition by him.

(e) Post at its business offices, meeting halls, and all other places where notices to members are customarily posted, copies of the attached notice marked "Appendix A." Copies of said notice to be provided by the Regional Director for Region 20 shall, after being duly signed by representatives of the Respondent, be posted by Respondent immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.[17]

(f) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply therewith.[18]

Dated:

/s/ ALLEN SINSHEIMER, JR.
Allen Sinsheimer, Jr.
Trial Examiner

17. In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

18. In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 20, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."

APPENDIX A

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT in any manner restrain or coerce California Newspapers, Inc. d/b/a San Rafael Independent Journal in the selection of representatives chosen by it for the purposes of collective bargaining or the adjustment of grievances.

WE WILL NOT fine or otherwise discipline Foreman Gordon Dixon because of his conduct and performance of work as the selected representative of California Newspapers, Inc. d/b/a San Rafael Independent Journal for the purposes of collective bargaining or the adjustment of grievances.

WE WILL rescind all fines and costs and all other disciplinary action and excise and expunge all records or other evidence in our files connected with or related to the charges and proceedings against Gordon Dixon arising out of or connected with the discharge of Paul Austin.

WE WILL rescind any disciplinary action taken against Gordon Dixon and excise and expunge all records or other evidence in our files resulting from charges and proceedings

brought against Gordon Dixon because of his working for the Charging Party during the course of the strike called by us.

SAN FRANCISCO TYPOGRAPHICAL UNION NO. 21, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO

.....

(Labor Organization)

Dated .....By .....

(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 450 Golden Gate Ave., Box 36047, San Francisco, Calif., 94102, Telephone No. 556-0335.

APPENDIX B

Page	Line	Transcript	Correction
1	17	David	W. David
1	23	Grodin & Ceeson	Grodin & Beeson
4	2 *et seq.*	cases at the time they were consolidated,	cases at the beginning of the second day of hearings,
7	24	"G"	"g"
8	18	instance	insistence
10	20	Smullin	Smullin were
12	19	Paragraph 7 Subparagraph 8	Paragraph VII, Subparagraph (a)
12	23	211	2(11)
15	3	ever, the—	ever, or
15	10	1(h)	1(h)
17	7	Complaint	Answer
18	20	in this,	in,
20	5	it	me
24	10	I in	in
24	11	faced,	faced
24	12	issue,	issue was the existence
24	12	contract	contract,
24	22	record. This	record and that this
27	7	understanding,	understanding that the
29	19	itself to,	itself, to
29	19	take	take,
29	19	timing	timing,
29	20	a sharp	sharp
38	9 *et seq.* through line 12	MR. SMULLIN	[omit]
57	5	or	to
62	13	alternatives,	alternative
62	15	effect	affect
69	16	C-69275 WTS	C-69 275 WTS
71	16	hungup	hung-up
81	2	As of	After
84	22	were to	were at a
100	10	terminal	termination
102	17	seem	see him
103	8	Drexler	Dreitzler
183	18	Russel A. Weigle	Russell A. Wagle

Page	Line	Transcript	Correction
191	10	8(b)1(b)	8(b)(1)(B)
191	12	8(b)1(b)	8(b)(1)(B)
192	3	8(b)1(b)	8(b)(1)(B)
194	18	in earlier years	earlier
194	20	8(b)1(b)	8(b)(1)(B)
195	9	8(b)1(b)	8(b)(1)(B)
195	11	gone	ago
195	20	Bernal Foam	Bernel Foam
196	6	8(b)1(b)	8(b)(1)(B)
201	4	G	(g)
211	25	wrapping	ratting
221	3	Mailer	Mailers
224	12	in	with
225	18	8(b)1(b)	8(b)(1)(B)

Appendix D

193 NLRB No. 41
D-5464
San Rafael, Calif.

United States of America
Before the National Labor Relations Board

Cases 20—CB—2285—1
20—CB—2285—2
20—CB—2285—3

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO

and

California Newspapers, Inc. d/b/a San Rafael Independent Journal

DECISION AND ORDER

On May 13, 1971, Trial Examiner James T. Barker issued his Decision in this proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision with a supporting brief, the General Counsel filed limited cross-exceptions and an answering brief, and the Charging Party filed cross-exceptions and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial

error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as modified below.

The Trial Examiner found that the Respondent violated the Act by filing charges against, and citing before an investigating committee and its trial committee, employer representatives who consequently were fined and expelled from Respondent. However, he did not refer to such violations in his recommended Order and notice. The General Counsel excepts to this apparent oversight. We find merit to this exception and shall amend the Order and notice.

As we agree with the Trial Examiner that the Employer's representatives were at all relevant times supervisors within the meaning of the Act, we find it unnecessary to adopt or pass upon the Examiner's statement that it is the individual's status at the time discipline is imposed that governs.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner as modified below and hereby orders that Respondent, San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's recommended Order as herein modified.

1. Insert the following at the beginning of paragraph 1(b) of the Trial Examiner's recommended Order:

"Filing intraunion charges against, citing before an intraunion committee or trial tribunal,".

2. Substitute the attached notice for the Trial Examiner's notice.

Dated, Washington, D.C. Sep 24 1971

Edward B. Miller, Chairman
Howard Jenkins, Jr., Member
Ralph E. Kennedy, Member
NATIONAL LABOR RELATIONS BOARD

(Seal)

TXD-(SF)-52-71
San Rafael, Calif.

United States of America
Before the National Labor Relations Board
Division of Trial Examiners
Branch Office
San Francisco, California

Cases Nos. 20-CB-2285-1
20-CB-2285-2
20-CB-2285-3

San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO

and

California Newspapers, Inc. d/b/a San Rafael Independent Journal

---

W. David Smullin, Esq., of
San Francisco, Calif., for
the General Counsel.

Severson, Werson, Berke & Melchior,
by *Nathan R. Berke, Esq.*, of
San Francisco, Calif., for
the Charging Party.

Brundage, Neyhart, Grodin & Beeson,
by *Duane B. Beeson, Esq.*, of
San Francisco, Calif., for
the Respondent.

TRIAL EXAMINER'S DECISION

Statement of the Case

James T. Barker, Trial Examiner: This matter was heard at San Francisco, California, on January 12, 27, 28 and 29, 1971, pursuant to separate charges filed on July 20, 1970, by California Newspapers, Inc., d/b/a San Rafael Independent Journal, hereinafter called The Journal. On September 14, 1970, the Regional Director of the National Labor Relations Board for Region 20 issued a consolidated complaint and notice of hearing alleging that San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, hereinafter called the Respondent had violated Section 8(b)(1)(B) of the National Labor Relations Act, as amended, hereinafter called the Act. On March 22, 1971, the parties timely filed briefs with me.

Upon consideration of the briefs of the parties, and upon the entire record in this case[1] and my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Company

California Newspapers, Inc., d/b/a San Rafael Independent Journal, is a California corporation which has been at all times material herein engaged in the publication at its newspaper publishing plant in San Rafael, California, of a daily newspaper, the San Rafael Independent Journal. During the calendar year immediately preceding the issu-

1. The transcript of this proceeding contains numerous errors. Counsel for the General Counsel has filed a motion to correct certain of them. No opposition has been filed. As the motion of the General Counsel is addressed to the principal substantive errors in the transcript and as my analysis of the record indicates that the corrections are warranted, the transcript is hereby corrected in the manner indicated at "Appendix A."

ance of the complaint herein, The Journal received gross revenues in excess of $200,000 from the sale of newspapers and of advertising therein. During the same period of time, The Journal has been a subscriber to the Associated Press and United Press International, each of which is an interstate news service. Additionally, during the same period of time, in the course and conduct of its business operations, The Journal has purchased and received goods and services valued in excess of $50,000 at its San Rafael plant directly from sources located outside the State of California.

Upon these admitted facts, I find that at all times material herein California Newspapers, Inc., d/b/a San Rafael Independent Journal has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

The Respondent concedes that at all times material herein it has been a labor organization within the meaning of Section 2(5) of the Act, and I so find.

III. The Unfair Labor Practices

A. *The Issues*

1. Contentions of the Parties

The principal issue in this proceeding is whether Robert Dixon, Earl Dixon and/or Ernest Fingerlos were supervisors of The Journal with authority to adjust grievances of employees at a time when Respondent initiated disciplinary proceedings against them, fined them and expelled them from membership for working behind a picket line established by Respondent in support of its lawful strike against The Journal. The Respondent denies the commission of any unfair labor practices.

Initially, the Respondent contends that the relevant period for determining the authority of the individuals expelled from membership is the date on which they first worked behind the Respondent's picket line during the strike which ensued. Building upon this premise, the Respondent further contends that none of the three individuals possessed authority on behalf of the Company to adjust grievances or engage in collective-bargaining negotiations on behalf of the Company at the time they crossed the Respondent's picket line to work in the employ of the Company, or at any prior time.[2] Additionally, the Respondent contends that the proscriptions of Section 8(b)(1)(B) are not applicable in the context of this proceeding, because union membership of a supervisory employee was voluntary under the most recent collective-bargaining agreement between the Respondent and the Company and remained so at times subsequent to the beginning of the strike. As further ground for dismissing the complaint, the Respondent contends that, in light of the prefatory language of Section 8(b)(1), and in consideration of the decision of the U. S. Supreme Court in *N.L.R.B. v. Allis-Chalmers*, 388 U. S. 175, Section 8(b)(1)(B) does not prohibit a labor organization from instituting disciplinary proceedings against a foreman for crossing a lawful picket line during a strike; and that, in any event, no violation of Section 8(b)(1)(B) should be found where, as here, the expelled members do not wish to regain their union membership.

2. Ruling as to the Relevant Period

At the hearing the General Counsel took the position that the relevant period for determining the possession and

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2. It is conceded that none of the three had authority to engage in collective-bargaining negotiations on behalf of The Journal.

exercise of supervisory authority by Robert and Earl Dixon was January 7 through January 30, 1970; and for Ernest Fingerlos March 31 to April 22, 1970. In light of the position of the General Counsel and the gravaman of the respective intra-union charges filed against the three alleged supervisors, the Trial Examiner ruled, in substance, at the hearing that the relevant period for determining the supervisory status of the three individuals subjected to union charges was delineated, on the one hand, by the dates on which they respectively commenced working behind the Respondent's picket line and, on the other hand, by the date upon which intra-union charges were preferred against them. This ruling was made over objections of counsel for Respondent who contended, in substance, as noted above, that the relevant and material date for determining a possession of supervisory authority was the date upon which each individual crossed the Respondent's picket line, which action gave rise to the intra-union charges. Respondent thus contended that, for the aforesaid reason, it was entitled to probe the status of each of the alleged supervisors preceding the date upon which each crossed the Respondent's picket line and to elicit testimony and introduce evidence pertaining to a period prior to January 7 with respect to Robert and Earl Dixon and March 31 with respect to Ernest Fingerlos. Although the Trial Examiner ruled adversely to the Respondent on this issue, he permitted an offer of proof designed to establish that prior to crossing the Respondent's picket line none of the three alleged supervisors in fact possessed supervisory authority. This offer of proof was rejected by the Trial Examiner at the hearing. I affirm that ruling and I do here specifically reject Respondent's contention that introduction of evidence revealing the actual status of the three disciplined

individuals as "rank and file employees" before their return to work behind the picket line was warranted on the theory that this would reveal that the Company's investiture of supervisory authority in them after the strike was for the sole purpose of immunizing them from union discipline. Among the purposes of Section 8(b)(1)(B) is the extension of freedom to an employer isolated from union interference and coercion to select supervisory personnel to meet business and operational exigencies. It is the authority possessed by the individual selected by management at the time he was subjected to union discipline that governs and not his prior or subsequent status. Practical impediments confronting the Respondent in disproving the General Counsel's contention do not warrant a different result. In any event, latitude was given Respondent in probing the authority possessed by each of the disciplined employees immediately preceding the relevant date on the theory that this would give insight into the validity of testimony suggesting that during the relevant period previously possessed supervisory authority was merely reinforced and reiterated by top management.

B. *The Pertinent Facts*

1. Background Facts

On January 7, 1970,[3] Respondent commenced a strike at The Journal. The strike grew out of the inability of the Respondent and The Journal to successfully negotiate a collective-bargaining agreement to replace the agreement between them which had expired on November 2, 1968.

On January 7 ultimate authority and responsibility for the entire operation of The Journal resided with the pub-

3. All dates herein refer to the calendar year 1970 unless specifically indicated otherwise.

lisher of The Journal. Norwin Yoffie in his capacity as general manager of The Journal was next in line of authority. On January 7, and at relevant times thereafter, Gordon Dixon was employed in the capacity of superintendent of The Journal and in this capacity had general supervisory authority over the composing room, the pressroom, the engraving department and the typing department. He similarly had the title of foreman. Gordon Dixon had the authority to hire and discharge composing room employees. He maintained one office adjacent to the composing room and a separate office on the same floor as the composing room but not contiguous to it. On or about January 22, Gordon Dixon suffered a heart attack and was hospitalized until March 1970. During his hospitalization, he retained the title of superintendent and of foreman.

In the composing room work tasks are performed which relate to the flow of editorial copy through the department. It is also in the composing room that the markup and paste-up of advertising copy is performed. Additionally, linotype and TTS machines are utilized and monitors are operated. It is in the composing room that the task of proofreading material is performed.

During the relevant period, Earl Dixon served as assistant foreman in charge of the day shift in the composing room and Robert Dixon was employed in the composing room in the capacity of assistant foreman in charge of cold-type composition and makeup.[4] Earl Dixon had general responsibility for the entire operation of the day shift in the composing room and had specific responsibility in the area of composition, which included work performed by

4. At all pertinent times advertising composition at The Journal had been in cold-type. By this process advertising is composed on a photo-composition or lino-film machine and then pasted into position on the page.

TTS and linotype operators, and by monitors and proofreaders. Robert Dixon's area of specific responsibility was with respect to cold-type composition. Additionally, he had responsibility in the makeup of news pages in the composition room.

With the commencement of the strike and for a period of time thereafter, the work of the composing room was performed by management and supervisory personnel augmented by a number of rank-and-file employees. By January 17, management was able to begin assigning personnel permanently to a work position, but no definitive two-shift arrangement emerged until several days later.

2. The Supervisory Issue

a. *The hiring procedures*

In January, following commencement of the strike, approximately 30 or 35 composing room employees were hired. By virtue of the strike, it became necessary for The Journal to increase its recruitment efforts, and to this end, after initial testing and screening procedures were performed with the participation of Norwin Yoffie, Gordon Dixon and other officials of the Company, the assistant foremen of the various departments, including Robert and Earl Dixon, conducted final interviews and made the final selection of personnel. New hires were accomplished by Robert and Earl Dixon during this period of time without the prior approval of Gordon Dixon.

Coincident to undertaking the reconstitution of the work force, Norwin Yoffie spoke to all plant supervisors, including Robert and Earl Dixon. He informed them of the urgency of recruitment efforts and outlined the program to be followed in recruiting, screening, testing, and selecting personnel. He delineated to the supervisors their respective

areas of work responsibility and informed them that they would have the responsibilities for making the final evaluation of an applicant's qualifications and for selecting personnel for hire in their respective assigned departments. He detailed for the supervisors some of the "specifics" entailed within their "general responsibilities." Yoffie further discussed with the supervisors the "wage philosophy" that would apply in operating their departments and in the course of the discussion informed them that they had authority to recommend wage increases for personnel under their direction.

b. *Robert Dixon*

During the period January 7 to January 30,[5] Robert Dixon, as found, was employed in the composing room of The Journal in the capacity of assistant foreman in charge of cold-type composition and makeup. On or about January 22, when Gordon Dixon became hospitalized, Robert Dixon became acting foreman of the composing room. During the aforesaid period, Robert Dixon was paid a weekly salary of $197.10. His normal workweek was 35 hours. For the purposes of overtime compensation, he was paid at a premium rate of time and one-half of his hourly compensation which was the equivalent of 1/35th of his weekly salary. The highest weekly scale for any rank-and-file employee working under Robert Dixon during the relevant period was $182.10 per week. Robert Dixon did not participate in any bonus or other remuneration other than his salary and overtime compensation.

During the relevant period, Robert Dixon had responsibility and authority to assign work and to supervise the

5. In accordance with the ruling of the Trial Examiner, this period of time is deemed the relevant period for determining the status of Robert and Earl Dixon.

work of rank-and-file employees in the composing room. After January 17, but prior to January 30, a complement of approximately 15 permanent employees had been achieved at The Journal in those job categories in the composing room over which Robert Dixon had authority.[6] During the relevant period, Robert Dixon had authority to transfer, recall, discipline and discharge employees and he was vested with authority to grant time off, to participate in the hire of new employees, to recommend wage increases for employees under his direction and to request said employees to work overtime. Additionally, Robert Dixon had authority to adjust grievances of employees engaged in the pasteup, cold-type composition work and in the floor makeup work. Procedures in effect after January 7 provided for grievances to be taken up individually by the aggrieved employee with his supervisor. During the period immediately following the commencement of the strike, Yoffie specifically instructed Robert Dixon that he had authority to discharge employees and to take disciplinary action against them. In his testimony at the hearing, Yoffie could not recount with particularity instances wherein Robert Dixon had discharged, disciplined, granted time off to, adjusted grievances of, or required employees to work overtime. Yoffie testified, nonetheless, in substance, that these prerogatives and authorities were inherent in Robert Dixon's assigned responsibilities in the composing room and would have been exercised in the normal course of events in the composing room.[7]

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6. Eight or ten employees were employed in pasteup and advertising tasks while an additional four or five were employed as floor workers.

7. Yoffie testified that much overtime was worked in the composing room during the period of January 7 to January 30, and that the work force during that period of time was an expanding one. However, he further testified that "the pattern of life" in the department was such as to necessitate an assumption that time off was requested and granted.

However, Yoffie testified that Robert Dixon had a role in hiring "most" of the 15 employees who constituted the complement of permanent employees in the composing room in those job categories over which Robert Dixon had authority.[8] Additionally, the testimony of Norwin Yoffie establishes that during the relevant period Robert Dixon recalled at least two employees.[9]

In the daily performance of his duties, Robert Dixon spent a portion of the worktime marking up advertising copy to be set on the linotype machine in the department. By this procedure indication is made on the advertising copy transmitted from the advertising services department to the composing room as to the type face, size and measure in which the copy is to be finally set for reproduction. Robert Dixon also performed some pasteup and floor work. Other portions of his workday were devoted to overseeing and directing the work of others in the department. Because of the relative inexperience of the work complement during January 7 to January 30 a large portion of Robert Dixon's time was spent in oversight tasks. Included in these tasks, as those responsibilities relate specifically to the flow of advertising copy through the composing room,

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8. Norwin Yoffie testified that some of the personnel had worked in other departments and that to effectuate the transfer of these employees under then prevailing procedures, Robert Dixon would have had to make a specific request to the department head of the department in which these employees had formerly been employed, or to Gordon Dixon. Yoffie was unable to testify specifically with respect to individual transfers requested by Robert Dixon, but he testified that he learned by word of mouth from supervision that at least one such request had been made by Dixon and had been honored.

9. The term "recall" is a word of art referring to the return upon request of supervision of an employee to perform additional work tasks after he had completed his normal shift and has left the plant for the day. Robert Dixon's authority to recall employees had been verbally emphasized to him by Yoffie during conversations between them.

Robert Dixon had the responsibility for directing an employee to "redo" an advertisement which was revealed by proofreading scrutiny to have been incorrectly marked as to type and size.

c. *Earl Dixon*

During the relevant period, Earl Dixon's responsibilities as assistant foreman in charge of the entire day shift in the composing room required him to designate the work to be performed by the employees employed in those job categories, as above found, over which he had specific responsibility. Additionally, this element of his responsibility required him to determine whether or not the job tasks he designated to be performed had been carried out in a timely fashion. In fulfilling these responsibilities, Earl Dixon exercised judgment and discretion in the designation of employees to perform the work tasks at hand. His exercise of this judgment and discretion was based upon his knowledge of the work skills and capabilities of the employees under his direction. During relevant times, Earl Dixon had a desk in the composing room from which he had a view of portions of the composing room.

Throughout the relevant period, Earl Dixon participated in the selection of personnel for work in the composing room and he had authority to hire, discharge, transfer and suspend employees. He had authority also during this period of time to grant time off, to request employees to work overtime, to recall employees and to recommend wage increases. Earl Dixon had occasion during the relevant period to be in complete charge of the composing room and during this time span he caused employees to be transferred from one job to another. Additionally, during this time period, Earl Dixon was vested with specific authority to

deal with and adjust employee grievances. This authority included the capacity to advise and assist the employees under his direction concerning problems relating to their compensation or to their work.[10]

d. *Ernest Fingerlos*

During times relevant herein, and specifically during the first week of April, Ernest Fingerlos served in the capacity of chief machinist at The Journal. His duties were performed in the composing room at The Journal and they included responsibilities to maintain and repair all of the composing room equipment, to order equipment and parts as needed, to obtain supplies for the continued operation of the equipment and to direct the work of other machinists. During the time period March 31 to April 22, two machinists, in addition to Fingerlos, were employed by The Journal. In his capacity as chief machinist, Fingerlos possessed during pertinent times, authority to hire, discharge, assign and to transfer machinists from one job to another. He also had authority to request machinists to work overtime and to recommend a wage increase for machinists. His authority included the responsibility to consider and deal with employee grievances. Fingerlos worked principally during the daytime hours at The Journal, whereas one of the machinists, Craig Dumont, worked during the evening hours. However, on "most days" the hours of work for Fingerlos and Dumont overlapped.

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10. Earl Dixon credibly testified that prior to January 7 he had authority to hire, discharge and suspend employees and to resolve grievances. He testified that he exercised his authority to hire employees prior to January 7 and resolved some grievances. Documentary evidence of record supports Dixon's testimony in this latter regard. Earl Dixon further testified that he did not discharge or suspend any employee prior to January 7 and that he did not possess the authority to discharge employees when Gordon Dixon was present.

Norwin Yoffie testified that subsequent to the beginning of the strike he specifically detailed to Fingerlos the nature of his authority as head machinist. He pointed out to Fingerlos that in his capacity as head machinist Fingerlos had the responsibility for the selection, hiring and discharging of machinists. Yoffie testified, however, that Fingerlos played no role in the initial hire or transfer of the two machinists who were working in the department during times pertinent herein. He further testified that during the period March 31 to April 22 Fingerlos did not hire or terminate any machinists. However, he testified that during 1969 Fingerlos hired a machinist and that in late 1968 or early 1969 he terminated one.[11]

Norwin Yoffie testified that one of the machinists working under the direction of Fingerlos during times pertinent herein was a "fully competent" machinist who had the capacity to work by himself without supervision. However, he further testified that one of the other machinists was "not fully qualified" and that while he was capable of working by himself there were many levels of work that he could not perform. Yoffie further testified that in instances wherein the two machinists had performed complex work on machinery in the composing room it was Fingerlos' duty and practice to check the work to determine whether or not it had been satisfactorily accomplished.[12]

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11. Norwin Yoffie testified that while the collective-bargaining agreement then in effect gave Gordon Dixon the exclusive authority to discharge employees in the composing room, in actual practice, when Gordon Dixon was not present, this right to terminate employees was "assumed by another." He testified further, in substance, with respect to machinists whom Fingerlos in 1969 employed, that Gordon Dixon made the formal offer of employment but that Fingerlos, nonetheless, effectively selected the machinists for employment.

12. Norwin Yoffie testified that at a time subsequent to the strike the machinery in the composing room was replaced by more

Norwin Yoffie was unable to testify with specificity concerning instances wherein, during the period March 31 to April 22, Fingerlos actually exercised the authority to adjust grievances, recommend wage increases, grant time off to employees or to require employees to work overtime. However, Yoffie testified that authority to take these several actions was inherent in the authority possessed by Fingerlos.[12]

On April 22, and at pertinent times, Fingerlos was salaried and his weekly salary exceeded that of either of the two machinists who worked under his direction. Like the two machinists, Fingerlos received overtime compensation for work in excess of 35 hours per week.

3. The Alleged Unlawful Conduct

a. *The intra-union proceedings*

On or about January 30, Leon Olson, president of Respondent, filed charges with the Union against Robert Dixon and Earl Dixon alleging that by working behind Respondent's picket line during Respondent's strike against The Journal which commenced on January 7, Robert and Earl Dixon had violated Respondent's constitution and bylaws. Thereafter, on or about March 23, Respondent cited Robert and Earl Dixon to appear before its investigating com-

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sophisticated machinery which had the effect of eliminating much of the routine maintenance which at the time of the strike was absorbing the attention of the machinists. Yoffie did not specify in his testimony when this transition to the more sophisticated and automated machinery was accomplished.

13. Yoffie testified, in substance, that prior to the strike Fingerlos had actually participated in the resolution of a grievance, had made a recommendation to Gordon Dixon on behalf of a machinist of a wage increase and possessed, independent of the authority of Gordon Dixon, authority to grant time off to machinists and to require them to work overtime.

mittee scheduled to convene on March 30 to answer charges filed against them by Olson. Subsequently, on or about May 1, Respondent cited Robert and Earl Dixon to appear before its trial committee scheduled to convene on May 11 to answer the charges which had been filed against them by Olson. On or about June 21, as a consequence of action of its membership, Respondent found Robert Dixon and Earl Dixon guilty of the charges against them and they were expelled from membership. Additionally, Robert and Earl Dixon were each fined $10,000.

In a similar manner, on or about April 22, Leon Olson filed charges against Ernest Fingerlos alleging that, in violation of Respondent's constitution and bylaws, Fingerlos had crossed the picket line which Respondent had established at The Journal and had returned to work in The Journal's struck plant. Thereafter, on or about June 25, Fingerlos was cited by Respondent to appear before its investigating committee which was scheduled to meet on July 7, for the purpose of answering the charges which Olson had filed against him. Subsequently, on July 23, Respondent cited Fingerlos to appear before its trial committee scheduled to meet on August 3. On or about August 16, Respondent, through action of its membership, found Fingerlos guilty of the charges which had been filed against him. He was expelled from membership and fined $10,000.

The evidence of record establishes that, as charged by Respondent, Robert and Earl Dixon worked in the employ of The Journal at all relevant times on and after January 7, during which period of time Respondent was engaging in a strike against The Journal and in support thereof was engaging in picketing at The Journal's San Rafael place of business. Moreover, the evidence reveals that on and

after March 31 Ernest Fingerlos worked behind the picket line which had been established at The Journal.[14]

4. Union Membership Benefits

John De Martini, first vice president of Respondent, credibly testified that there has been in existence at all times pertinent a fraternal pension plan and a negotiated pension plan in which, to the extent found below, members of Respondent and/or employees represented by it participate. The former plan exists by virtue of provisions of the Book of Laws of the International Typographical Union and the latter plan derives from the terms of collective-bargaining agreements between employers and local unions of the ITU. The negotiated plan is funded entirely by the employers pursuant to the terms of the collective-bargaining agreement and the benefits under the plan are not dependent upon union membership. De Martini testified that a negotiated plan had been in effect for approximately four or five years between Respondent and The Journal. He testified that when the strike commenced on January 7, The Journal ceased making contributions to the negotiated pension plan.

The provisions governing the fraternal pension plan are contained in Article XX of the Book of Laws of the ITU. The basic, enabling provision is as follows:

> Section 1. Any member of the International Typographical Union who has reached the age of 60 years and having a continuous membership of twenty-five years immediately antedating the time of application and who is unable to continue in or secure sustaining

14. The foregoing is based upon admissions of record and upon evidence adduced at the hearing. The legality of the proceedings leading to the expulsion and fining of Robert and Earl Dixon and of Ernest Fingerlos is not here in issue.

employment because of age or disability may receive the sum of $100 per month.

The provisions relating to the fraternal pension plan also contain allowances for payment of pensions to disabled members and, *inter alia*, specifies procedures for applying and qualifying for pension benefits.

Under Article XX of the Book of Laws of the ITU, the following provision is contained with respect to mortuary benefits:

> Sec. 11. Mortuary claims shall be allowed the beneficiary of any deceased member in good standing under the following terms and conditions: It is expressly provided that the beneficiary of any member shall be entitled to the mortuary benefit should death occur within the thirty-day period immediately following the expiration date of a current working card. (See Section 1, Article IX, and Section 2, Article XXIII, Bylaws).

Article IX, Section 1 provides for the issuance of a working card to members whose dues are fully paid and Article XXIII, Section 2 specifies the wording and content of a traveling card which may be issued to members in good standing who desire to leave the jurisdiction of the local union.

De Martini further testified there are in existence no health plans which derive solely from membership in the ITU, or in Respondent. He testified that the health plans in which members of ITU participate are negotiated health plans which exist under terms of collective-bargaining agreements with employers.

Earl Dixon testified that prior to his expulsion from the Union he had been a member of the ITU for approximately 36 years. He further testified that he had been a vice

president of an ITU local with which Respondent merged. Earl Dixon continued to be a member of the ITU after the merger and was thereafter a member of Respondent until his expulsion in 1970. Earl Dixon testified that at the time of the hearing he was 62 years of age.[15]

Article XII, Section 1 of the Book of Laws of the ITU contains the obligation to which every person admitted to membership in the ITU must subscribe. In pertinent part the Article provides, ". . . I will, in good conscience and to the best of my ability, comply with all the laws, rules, regulations and decisions of the International Typographical Union and of any subordinate union to which I may belong . . ."

The most recent collective-bargaining agreement between Respondent and The Journal expired on November 2, 1968. Negotiations followed and the strike commenced, as found, on January 7, 1970. There is a dispute, which I find unnecessary to resolve, whether the terms of the collective-bargaining agreement remained in effect until the strike. It is clear that none of its terms were given effect on or after January 7, 1970.

Conclusions

The issues in this case are, (1) whether Robert and Earl Dixon and Ernest Fingerlos were at relevant times supervisors within the meaning of the Act, and (2) whether by filing charges against them, citing them to appear at an intra-union investigatory committee meeting and a trial

15. To the extent that Earl Dixon's testimony inferred that life and health insurance benefits and dental care benefits derived solely from membership in Respondent, I reject his testimony. Rather, I credit the testimony of John De Martini that these benefits became available to members only under collective-bargaining agreements with employers. De Martini's testimony in this regard finds support in the absence of any provisions in the Book of Laws of the ITU making provisions for such benefits.

committee proceeding to answer charges, fining them and expelling them from membership, all for the reason that they worked in the employ of The Journal during the union-called strike, the Respondent violated Section 8(b)(1)(B) of the Act.

Initially, I find that Robert and Earl Dixon and Ernest Fingerlos were supervisors within the meaning of the Act at all pertinent times after the strike commenced and throughout the several stages of the intra-union proceeding against them.

The evidence of record adduced by the General Counsel, and upon which the General Counsel placed entire reliance established, I find, that after January 7 and on January 30 when charges were preferred against them, Robert and Earl Dixon were vested with the array of authority which is the accepted indicia of supervisory status under Section 2(11) of the Act. I further find that on March 30 and on April 22, respectively, and through the intervening period of time, and thereafter, Ernest Fingerlos was similarly vested with supervisory authority. Additionally, I find that there is credible evidence of record sufficient to establish that during the period of time ruled relevant as to each, Robert and Earl Dixon and Ernest Fingerlos exercised elements of supervisory authority vested in them and that this exercise of authority was sufficient, independently, to establish their supervisory status.

The General Counsel correctly contends that under the terms of Section 2(11) of the Act,[16] the Board has made

16. Section 2(11) of the Act provides as follows: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

clear that it is the possession of supervisory authority and not its exercise that is determinative.[17] Further, the Board has found that an individual becomes a supervisor within the meaning of the Act if he possesses just one of the attributes of supervisory authority delineated in Section 2(11).[18] The credible evidence of record reveals that under the operating and oversight procedures utilized by The Journal after January 7, Robert and Earl Dixon and Ernest Fingerlos were vested with a broad range of supervisory authority. It is clear from the record that, in addition to being vested with authority to hire personnel to work in the departments under their direction—an investiture in which Ernest Fingerlos shared—Robert and Earl Dixon played a role in selecting the composing room work complement which was reconstituted after January 7. Further, during the relevant period Robert Dixon recalled employees under his direction and Earl Dixon had occasion to transfer composing room employees from one job to another. The record evidence also establishes authority on the part of Robert and Earl Dixon and Ernest Fingerlos to responsibly direct the work of employees assigned to them. Thus, while Robert and Earl Dixon, as well as Ernest Fingerlos, performed some work tasks typically performed by journeymen, the record makes clear that each was required separately and additionally to control the flow of work, to observe the work of the rank-and-file employees and to specify corrections. The work flow from one department to another was well defined but the work being performed by rank-and-file employees within the department was, the record suggests, skilled work which was on an order of dif-

17. *The Eavey Company*, 115 NLRB 1779; *Waldo Rohnert Company*, 120 NLRB 152, 154, at note 9.

18. *Research Designing Service, Inc.*, 141 NLRB 211.

ficulty requiring the exercise of independent judgment on the part of supervision both as to the identity of personnel who would perform the work tasks and some elements of its actual performance.

A further attribute of supervisory authority which was shared by Robert and Earl Dixon and Ernest Fingerlos was the authority to adjust grievances and to make effective recommendations with respect to their resolution. Thus, the authority of each included not only that authority normally associated with the typical first step grievance procedure but included authority to make efficacious recommendations to higher authority.

Upon the foregoing considerations, including the findings which I make that Robert and Earl Dixon and Ernest Fingerlos not only were vested with authority to act on behalf of The Journal in a manner which constituted them supervisors within the meaning of the Act, but that they actually, during the periods of time relevant as to each, exercised this authority, I find that each was a supervisor within the meaning of Section 2(11) of the Act.[19]

I further find that, by filing charges against Robert and Earl Dixon and Ernest Fingerlos, citing each of them to

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19. To find, as Respondent contends, that none of the three was a supervisor would require the trier of fact to indulge the anomalous assumption that a work force of more than thirty employees could function over a substantial period of time without firstline supervision. As there is no evidence of record to warrant the assumption that officials in the hierarchy of the company vested with primary responsibility for management of the affairs of the company expended their energy in day-to-day direction of the operating departments I find additional ground for rejecting Respondent's contention on the supervisory issue. *Sturgeon Electric Co.*, 166 NLRB 210, 214.

Although there is evidence of record to reveal that prior to January 7 both Earl and Robert Dixon possessed and exercised aspects of supervisory authority, I deem it unnecessary, in context of the instant record, to rely upon this evidence to support my finding, above made, that they were supervisors.

appear before an intra-union committee and a trial tribunal of the Union, and by subjecting each of them to intra-union disciplinary actions which resulted in an assessment of fines against them and their expulsion from membership, Respondent violated Section 8(b)(1)(B) of the Act. This finding is predicated upon an application of the Board's decision in *San Francisco-Oakland Mailers' Union No. 18, International Typographical Union*, 172 NLRB No. 252, and upon the Board's subsequent decisions in *New Mexico District Council of Carpenters and Joiners of America (A. S. Horner, Inc.)*, 177 NLRB No. 76 and *Toledo Locals Nos. 15-P and 272 of the Lithographers and Photoengravers International Union, AFL-CIO (The Toledo Blade Company, Inc.)*, 175 NLRB No. 173.

In *San Francisco Mailers* the Board found that the union therein had violated Section 8(b)(1)(B) of the Act by engaging in certain conduct directed towards company supervisors of a variety similar to that in which Respondent here engaged. This union conduct included citing the supervisors to appear before an executive committee of the union to answer charges of alleged violations by the supervisors of provisions of the collective-bargaining agreement between the union and the company and of fining them for the alleged offenses. In reaching its determination that the union had by these actions violated Section 8(b)(1)(B), the Board observed:

> We are in agreement with the Trial Examiner that the citation of [the supervisors] was not, as contended by Respondent, solely for investigative purposes. We find rather, the Respondent's actions, including the citations, fines, and threats of citation, were designed to change the Charging Party's representatives from persons representing the viewpoint of management to persons responsive or subservient to Respondent's will.

> In enacting Section 8(b)(1)(B) Congress sought to prevent the very evil involved herein—union interference with an employer's control over its own representatives. That Respondent may have sought the substitution of attitudes rather than persons, and may have exerted its pressure upon the Charging Party by indirect rather than direct means, cannot alter the ultimate fact that pressure was exerted here for the purpose of interfering with the Charging Party's control over its representatives. Realistically, the Employer would have to replace its foremen or face *de facto* nonrepresentation by them. [Footnote citations deleted.]

Subsequently, in the *Horner* case the Board considered whether a union had violated Section 8(b)(1)(B) of the Act by preferring charges, imposing fines and attempting to collect such fines against a supervisor because, in his capacity as a project superintendent he had, *inter alia,* refused to accede to the union's demand that he cease working for an employer not making contributions to the union's health and welfare fund. The Board found, on the basis of its decision in *San Francisco Mailers* that the union had by its conduct violated Section 8(b)(1)(B) of the Act. In reaching this conclusion the Board noted that the company was not contractually or otherwise obligated to contribute to the union's health and welfare fund. The Board reasoned that the union was accordingly "using its internal working rules to boycott an employer who did not have a contract with the [union] by making it a violation, subject to a fine, for its members to work for such an employer." The Board concluded that it was clear that the basic dispute underlying the disciplinary action against the superintendent was not entirely an intra-union matter but involved an underlying dispute between the union and the company and not one

between the union and one of its members. The Board reasoned that compliance by the superintendent to the demands of the union which the company was not contractually obligated to honor "would have had the effect of depriving the Company of the services of its selected representatives for the purposes of collective bargaining or the adjustment of grievances."

The inhibiting effect in the context of Section 8(b)(1)(B) of the Act deriving from union disciplinary actions against supervisors vested with authority to adjust employee grievances which was given demarcation in the *San Francisco Mailers* case was given further dimension by the Board in *Toledo Locals Nos. 15-P and 272 of the Lithographers and Photoengravers International Union, AFL-CIO (The Toledo Blade Company, Inc.), supra.* In *Toledo Blade* the Board adopted the following rationale of the Trial Examiner therein:

> If, therefore, the supervisor has actually been designated as the employer's bargaining or grievance representative (as the Board and the Trial Examiner found in the *San Francisco Mailers'* case, and I have also found in the present case), the Unions' discipline of the supervisor is unquestionably a restraint upon, and coercion of the employer's continuing its selection of, and reliance upon, the supervisor as its bargaining and grievance representative and an unfair labor practice within the meaning of Section 8(b)(1)(B) of the Act. But even if, as I have also indicated the Board might find in the present case, the disciplined supervisor merely has such present substantial other supervisory authority and regular contact with the employees under him as to make him a natural, possible, future choice of the employer to handle its grievances as occasion

might arise, his discipline by the union restricts the employer's freedom in making that choice and future selection as bargaining or grievance representative and would, in accordance with the language of Section 8(b)(1)(B) and the Board's reasoning in *San Francisco Mailers*, also constitute a restraint and coercion of the employer in "the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." Furthermore, in either of these cases, it is apparent from the language of Section 8(b)(1)(B) and from the general reasoning of the Board in *San Francisco Mailers*, that *it is not an essential element of the unfair labor practices that the disciplined supervisor be a compelled union member under a union-security clause obtained by the union. It is enough that his actual membership has colorably subjected him to the offensive discipline and its effect upon his employer's right to rely upon him as a supervisor.* [Emphasis supplied.]

Proceeding by analogy from the thrust of the Board's decision in *Horner* and taking cognizance of the nature of the inhibitions against the exercise of supervisory prerogatives to handle and adjust employee grievances alluded to in *Toledo Blade*, in conformity with what I deem to be the Board's meaning and application of Section 8(b)(1)(B), I conclude that a labor organization violates that section of the Act, and thus engages in restraint and coercion within the meaning of that provision of the Act, by bringing intra-union charges against supervisors and subjecting them to intra-union proceedings, fines and ultimate expulsion because they worked behind a picket line in the employ of their employer during a union-called strike. The violation is consummated even though, as here, no union-security

arrangement abides to rendeer compulsory the union membership of the disciplined supervisor. It is enough that he was a member of the union when the disciplinary actions were taken, and that the intra-union sanctions to which he was subjected were of a character, quality or gradation sufficient to reasonably have the effect of inhibiting him in carrying out those supervisory grievance handling and collective-bargaining responsibilities which had been entrusted him prior to the initiation of the disciplinary action; or to serve as a signal to other supervisors who are members of the union that similar discipline might be visited upon them by the union for similar "offenses" against it. It is through this chain of causation that the interference and coercion against employer choice which is the protection accorded by Section 8(b)(1)(B) arises.[20] Nor is it essential that the authority of the disciplined supervisor to adjust grievances derived from a collective-bargaining agreement. Rather, it is sufficient that the authority vested in him by his employer extends merely to the adjustment of personal grievances of employees.[21]

These conclusions are consonant with those reached by Trial Examiner George Downing in *Milwaukee Printing & Pressmen Assistants Union, No. 7*, TXD-187-70, issued April 2, 1970. In reaching his determination that the union therein had violated Section 8(b)(1)(B) for fining a supervisor for crossing the union's picket line, Trial Examiner Downing observed:

> As the Board has noted, the firing or other disciplining of a management representative will have an inhibiting effect on his future conduct as a supervisor and repre-

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20. *Dallas Mailers Union, Local No. 143, and International Mailers Union (Dow Jones Company, Inc.)*, 181 NLRB No. 49.

21. *Toledo Locals Nos. 15-P and 271 of the Lithographers and Photoengravers International Union, AFL-CIO (The Toledo Blade Company, Inc.)*, supra.

sentative of the employer and will accordingly restrain the employer from retaining him as its representative. Such disciplinary measures will also be a clear signal to other foremen, who under the established practice are members of the Union, that they would be subject to similar discipline if they administer the contract or dispose of grievances in a manner displeasing to the union. Thus the effect of the disciplinary action is to restrain and coerce the employer within the meaning of Section 8(b)(1)(B) by limiting its "right at any time to make and rely upon a selection of representatives from an uncoerced group of such supervisors whose loyalty to [it] has not been prejudiced." *Dallas Mailers' Union etc. (Dow Jones Company, Inc.)*, 181 NLRB No. 49 quoting from *Toledo Blade Company, supra.*

A similar conclusion as to the violative nature of such conduct was reached by Trial Examiner Allen Sinsheimer, Jr., in his decision in *San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO*, TXD-(SF)-134-70.

In consideration of the foregoing, I must reject the contention of the Respondent that no violation of Section 8(b)(1)(B) may be found when, as here, the disciplined supervisors are not required to be or remain union members. Each was at the time of the disciplinary action against him a member of Respondent and the inhibiting effect of the discipline both to the disciplined supervisors and the Employer was accordingly immediate and direct. Moreover the less direct impact upon the Company's *future* selections of supervisory personnel who may also be union members when the instant dispute is settled is both substantial and predictable and not merely speculative, particularly in the

newspaper industry where the ITU is so vital a force.[22] Additionally I must reject the further contention of Respondent that no violation of Section 8(b)(1)(B) may be found when an expelled supervisor does not desire to regain his union membership. The protection accorded by Section 8(b)(1)(B) is the right of an employer to be free from restraint and coercion in the selection of his representatives, and the impact upon this freedom is not to be measured solely by its immediate effect upon the disciplined supervisor.[23]

Similarly, I find without merit Respondent's contention that a proper balancing of interests as between the right of a union through intra-union disciplinary proceedings and fines to preserve itself and the Section 8(b)(1)(B) protection given employers in the selection of bargaining and grievance handling representatives requires Board sanction of the conduct of Respondent herein. Where, as here, the purpose and effect of the disciplinary action was such as to affect not only the relationship between the union and its members, but related closely to strike activity and thus to an underlying dispute between the union and the company, the Board has balanced the interests to which Respondent alludes in favor of the statutory policy of allowing the employer an unimpeded choice of representatives for collective bargaining and the settlement of grievances.[24]

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22. *New Mexico District Council of Carpenters and Joiners of America; United Brotherhood of Carpenters and Joiners of America (A. S. Horner, Inc.)*, 176 NLRB No. 105; *New Mexico District Council of Carpenters and Joiners of America (A.S. Horner, Inc.)*, 177 NLRB No. 76.

23. *San Francisco-Oakland Mailers' Union No. 18, International Typographical Union, supra; Toledo Locals Nos. 15-P and 273 of the Lithographers and Photoengravers International Union, AFL-CIO (The Toledo Blade Company, Inc.), supra.*

24. *New Mexico District Council of Carpenters and Joiners of America (A. S. Horner, Inc.), supra; San Francisco-Oakland Mailers' Union No. 18, International Typographical Union, supra.*

Moreover, to the extent that Respondent would broaden the applicability of Section 8(b)(1) through an analogized application of decisions legitimizing union discipline in the area of picket line and decertification petition disciplinary fines[25] to incorporate the proviso in Section 8(b)(1)(A) to Section 8(b)(1)(B) as well, it is essential to conclude that the Board has already pronounced its policy and view.[26]

Accordingly, in view of the foregoing I find that by and through the separate acts of discipline imposed against Robert Dixon, Earl Dixon and Ernest Fingerlos, as alleged in the complaint, Respondent violated Section 8(b)(1)(B) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of The Journal, described in section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(B) of the

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25. See *N.L.R.B. v. Allis-Chalmers*, 388 U.S. 175; *Machinists Lodge No. 405 (Boeing Co.)*, 185 NLRB No. 23; *Local 4186, United Steelworkers of America, AFL-CIO (McGraw Edison Company, etc.)*, 181 NLRB No. 162.

26. *San Francisco-Oakland Mailers' Union No. 18, International Typographical Union, supra; Toledo Locals Nos. 15-P and 272 of the Lithographers and Photoengravers International Union, AFL-CIO (The Toledo Blade Company, Inc.), supra; New Mexico District Council of Carpenters and Joiners of America; United Brotherhood of Carpenters and Joiners of America (A. S. Horner, Inc.), supra.*

Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and the entire record in this case, I make the following:

Conclusions of Law

1. San Francisco Typographical Union No. 21 International Typographical Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. California Newspapers, Inc., d/b/a San Rafael Independent Journal has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. By restraining and coercing California Newspapers, Inc., d/b/a San Rafael Independent Journal in the selection of representatives for the adjustment of grievances, the Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foreging findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[27]

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27. In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent, San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) In any manner restraining or coercing California Newspapers, Inc., d/b/a San Rafael Independent Journal in the selection of representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) Fining or otherwise disciplining Supervisors Robert and Earl Dixon and Ernest Fingerlos because of their conduct and performance of work as the selected representatives of California Newspapers, Inc., d/b/a San Rafael Independent Journal for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Rescind any fines, suspensions, expulsions, or other disciplinary acts that may have been taken against Robert and Earl Dixon and Ernest Fingerlos, and excise and expunge all records or other evidence in the files of Respondent resulting from charges and proceedings brought against Robert and Earl Dixon and Ernest Fingerlos because of their working for the California Newspapers, Inc., d/b/a San Rafael Independent Journal during the course of the strike called by the Respondent.

(b) Advise the said Robert and Earl Dixon and Ernest Fingerlos, in writing, that Respondent has taken the aforesaid action in compliance with paragraph 2(a) above and that it will cease and desist from the actions forbidden in paragraphs 1(a) and (b) of this Order.

(c) Post at its office and at all meeting halls copies of the attached notice marked "Appendix B."[28] Copies of said notice, on forms to be provided by the Regional Director for Region 20, shall be duly signed and posted by an authorized representative of Respondent immediately upon receipt thereof, and shall be maintained, in conspicuous places, including all places where notices to members are customarily posted, for a period of 60 consecutive days thereafter. Reasonable steps shall be taken to insure that the notices are not altered, defaced, or covered by any other material.

(d) Mail or deliver to the Regional Director for Region 20 signed copies of said notice for posting by the Company, the Company willing.

(e) Notify the Regional Director for Region 20, in writing, within 20 days from the date of the receipt of this Decision, what steps have been taken to comply herewith.[29]

Dated:

/s/ JAMES T. BARKER
James T. Barker
Trial Examiner

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28. In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

29. In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX A

Page	Line	Transcript	Correction
Title	6	Plaintiff	Respondent
Title	10	Respondent	Charging Party
2	21	examined prior	examined by Respondent's counsel prior
4	25	position to the party	positions of the parties.
10	4	20-CB-2285	20-CB-2205
29	20	and they	or that they
30	18	The record isn't the slightest clear in	In case the record isn't clear on
34	24	ask	answer
35	22	over	over again
36	24	typing	stereo-typing
39	22	gradually	greatly
49	7	Case No. 20-CB-2285	Case No. 20-CB-2285-1-2-3
55	10	8(b)(1)(b)	8(b)(1)(B)
93	11	Wisher	Wishard
93	13	Wisher	Wishard
101	1	Cole Publisher	Co-publisher
178	2	in the	in view of
217	8	am	am not
218	8	irrelevance	relevance
230	17	Wayne	Duane
236	16	impressed	pressed
254	12	reply	rely
310	11	Chapter	chapel at the
320	12	Honor	Honor, I
320	12	as	that
369	23	Dixon's son	Dixon
380	20	asserting	assignments for
409	5	cold—	cold type.
412	18	Your	When your
412	18	required.	required,
412	19	What	what
425	7	hope	hoped
425	9	their	this
425	10	yours	you
425	13	shed	shield
425	14	discretionary	disciplinary
432	2	we always ask	he always asked
437	20	one	on
446	21	present	press

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES
GOVERNMENT

WE WILL NOT restrain or coerce CALIFORNIA NEWSPAPERS, INC., d/b/a SAN RAFAEL INDEPENDENT JOURNAL in the selection and retention of its representatives, including Earl Dixon, Robert Dixon and Ernest Fingerlos, for purposes of collective bargaining and adjustment of grievances of employees.

WE WILL NOT in any like or related manner restrain or coerce CALIFORNIA NEWSPAPERS, INC., d/b/a SAN RAFAEL INDEPENDENT JOURNAL in the selection of representatives chosen for the purposes of collective bargaining and adjustment of grievances of employees.

WE WILL NOT fine or otherwise discipline Earl Dixon, Robert Dixon and/or Ernest Fingerlos because of their representative conduct and performance of work as the selected representatives of CALIFORNIA NEWSPAPERS, INC., d/b/a SAN RAFAEL INDEPENDENT JOURNAL for the purposes of collective bargaining and adjustment of grievances.

WE WILL rescind any fines, suspensions, expulsions, or other disciplinary acts taken against Earl Dixon, Robert Dixon and Ernest Fingerlos, and excise and expunge all records or other evidence in our files resulting from charges and proceedings brought against Earl Dixon, Robert Dixon and

Ernest Fingerlos because of their working for The Journal during the course of the strike called by us.

SAN FRANCISCO TYPOGRAPHICAL UNION No. 21
INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO
(Labor Organization)

Dated..... By .....
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 13050 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California, 94102. Telephone Number 556-3197.

FILE COPY

JAN 28 1974

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1024

CALIFORNIA NEWSPAPERS, INC., d/b/a
SAN RAFAEL INDEPENDENT JOURNAL,
Petitioner,

vs.

SAN FRANCISCO TYPOGRAPHICAL UNION, No. 21,
INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

Memorandum of Respondent

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BARR PRINTING COMPANY OF CALIFORNIA, 245 FIRST STREET, SAN FRANCISCO 94105

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SAN RAFAEL INDEPENDENT JOURNAL,
Petitioner,

vs.

SAN FRANCISCO TYPOGRAPHICAL UNION, No. 21,
INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Memorandum of Respondent

QUESTIONS PRESENTED

1. Whether a labor organization violates Section 8(b)(1)(B) of the National Labor Relations Act by imposing union discipline against a supervisory employee who holds voluntary union membership for working behind the union's picket line during a lawful primary strike.

2. Whether, in the event the first question is answered affirmatively, the National Labor Relations Board exceeds its remedial authority by ordering the union to reinstate such a supervisor into union membership.

STATEMENT[1]

The petition correctly states that the question it presents is before the Court upon petitions for writ of certiorari in Nos. 73-549, 73-556, 73-795, and 73-887. As the petitions in these cases show, there is a conflict among the circuits on the principal question presented. If the petitions in the foregoing cases are denied, a similar disposition should be made of the petition in this case. If the Court grants a hearing on the merits of the question presented, it is respondent's position that it would be appropriate to hold the petition in this case until final determination of that question, and thereafter to issue the decision on the present petition in the light of that determination.

January, 1974.

Respectfully submitted,

BRUNDAGE, NEYHART,
GRODIN & BEESON
DUANE B. BEESON
Attorneys for Respondent

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1. The Statement of the Case contained in the petition adequately describes the facts and proceedings below for present purposes, with the following exceptions:

(1) It is not correct that Gordon Dixon was required to be a member of respondent (Pet. pp. 3-4). Dixon was subject to a compulsory membership clause in a contract which expired by its terms on November 2, 1968, more than a year before the events in this case (Pet. App. p. 13). The Board made no finding as to whether the contract continued in effect following its expiration date (*ibid.*).

(2) The petition mistakenly states that the strike in this case began on January 17, 1970 (Pet. p. 4). It began on January 7, 1970 (Pet. App. pp. 13, 41).

(3) The petition makes factual assertions as to the discipline which was imposed against Gordon Dixon (Pet. p. 4, n. 2). As noted by the Administrative Law Judge (Pet. Appx. p. 16, n. 8), the record does not contain evidence in this respect, the discipline having been imposed after the close of the hearing.